BellSouth will be unable to pull long distance carriers into South Carolina's local market by offering one-stop shopping to those carriers' existing customers. In the long term, it is wholly unclear that new restrictions on the Bell companies could change the emerging pattern of local competition, whereby CLECs target their services to urban businesses and largely ignore residential customers. Local entry is being limited by federal and state pricing policies, basic economics, and CLECs' priorities, not by Bell companies.

A. BellSouth's Entry Will Benefit Long Distance Consumers

Drawing upon actual market experience where incumbent LECs, such as SNET and GTE, have entered the interLATA market, Professor Hausman explained in BellSouth's application that excluding Bell companies from long distance deprives residential consumers of $7 billion in long distance savings per year. Hausman Aff. ¶¶ 5, 21-23, 24. This Commission likewise has affirmed that "BOC entry into the long distance market will further Congress' objectives of promoting competition and deregulation of telecommunications markets."[10] Specifically in South Carolina, the SCPSC has found that "consumers would benefit from the choices resulting from additional interLATA competition." SCPSC at 14.

The major incumbent long distance carriers — being the only parties who stand to lose from interLATA competition — are the only parties who question that granting BellSouth's Application will lower long distance prices. Indeed, their economic experts assume that there

---

to satisfy).

[10] Michigan Order ¶ 381; see also Separate Statement of Chairman Reed E. Hundt at 1 (appended to Oklahoma Order) ("the entry into the long distance market by" Bell companies under the Act "would promote competition and benefit consumers").

will be no price declines from BellSouth's provision of interLATA services. This failure to consider the most direct consumer effect of interLATA relief renders the incumbents' "one-sided approach" useless when determining where the public interest lies. Hausman Reply Aff. ¶ 12; see generally id. ¶¶ 4-6, 8-10; 12-13 (discussing AT&T, MCI, and Sprint testimony); Schmalensee Reply Aff. ¶¶ 3, 7, 20, 26, 33 (same).

The Big Three carriers can offer no evidence to rebut the observed fact that prices fall when incumbent LECs enter the market. Accordingly, they are forced to recycle speculative theories of possible discrimination or cross-subsidy that are grounded in the antitrust case against the Bell System and take almost no account of changed circumstances (such as network changes, divestiture of the Bell companies, federal and state regulatory reforms, developments in interLATA markets, and the 1996 Act) in the intervening fifteen years.

AT&T, for example, expresses the concern that BellSouth will use local exchange revenues to subsidize its long distance business. AT&T at 67-68. In its zeal to deny "the efficacy of regulation," id. at 68, AT&T does not bother to acknowledge that Congress and the Commission have taken extensive steps, including not only price cap regulation but also structural separation and audit requirements, to ensure that such behavior will not occur. See BellSouth Br. at 85-98. Indeed, AT&T's arguments have already been rejected; the Commission has concluded that its cost allocation and affiliate transactions rules, together with audits, tariff review, and the complaint process, "will effectively prevent predatory behavior that might result from cross-subsidization." Accounting Safeguards Order, 11 FCC Rcd at 17551, ¶ 28.

MCI warns the Commission about technical discrimination against unaffiliated interexchange carriers. MCI at 95. MCI never addresses such "details" as express statutory

prohibitions on such discrimination, interexchange carriers' monitoring capabilities, national and international standards, BellSouth's incentive to maximize access revenues, or how the sort of discrimination MCI imagines would allow BellSouth to obtain market power in the long distance business. See generally BellSouth Br. at 91-95.

AT&T asserts that once in the market, BellSouth may "engage in a classic price squeeze . . . by continuing to impose inflated charges for non-competitive exchange access." AT&T at 67. This is incorrect as a matter of economics. See Schmalensee Reply Aff. ¶¶ 35-52; Hausman Reply Aff. ¶ 26. More immediately, however, AT&T neglects to mention that the Commission has already considered this issue, concluding that any risk of price squeezes can be addressed through the Commission's procedures and the antitrust laws. BOC Non-Dominance Order ¶¶ 127-129.

In the end, AT&T and MCI fall back on the claim that while misconduct by BellSouth may be readily detectable, it might not be sufficiently punished. AT&T at 69; MCI at 95.[11] The incumbent long distance carriers treat substantial penalties, including civil and criminal penalties and revocation of interLATA authority, in a most cavalier fashion. See BellSouth Br. at 96-98. To the extent that they worry about complainants' ability to make out a case, the Commission has already ruled that after a prima facie showing of non-compliance, the burden shifts to the

[11] Missing the irony, MCI also observes that "[a] determined incumbent can significantly delay the onset of competition by raising numerous meritless challenges to regulatory proceedings and arbitrations." MCI at 92. That double-edged comment should give the Commission pause, as should AT&T's statement that what it fears as a result of interLATA relief — the reason why consumers should be denied immediate price reductions — is that Bell company conduct that could not be distinguished from "justifiable business practice." AT&T at 69.

Bell company to produce evidence of its compliance with the conditions of entry under section 271. Non-Accounting Safeguards Order, 11 FCC Rcd at 22072-75, ¶¶ 345-351.

Recognizing that there is no empirical or theoretical support for the claim that BellSouth's provision of long distance service would raise consumer prices, opponents quickly turn to debating the amount of the price drop that BellSouth's entry will bring. While opponents suggest that long distance markets are "effectively competitive [in South Carolina] today," AT&T's Hubbard & Lehr Affs. ¶ 11; MCI's Hall ¶¶ 120-181, they can only do so by ignoring lower prices in Connecticut, GTE's territory, Canada, and other areas where incumbent LECs are free to compete. See Hausman Reply Aff. ¶¶ 4-7, 15, 18, 20-23, 27-29, 35.

Even though they overlook the most relevant market experience in favor of aggregated pricing data of their own selection, the incumbents still are forced to cook the books in an effort to hide residential price increases. The Big Three's economists employ two principal devices to disguise the absence of competitive pricing for residential customers. They lump residential callers together with business customers, thereby "hid[ing] the increases in rates that residential customers have paid in recent years." Schmalensee Reply Aff. ¶ 21; see id. ¶ 9; Hausman Reply Aff. ¶ 25. In addition, they systematically overstate the significance of discount plans, see Schmalensee Reply Aff. ¶¶ 23-26, going so far as to base their claims of falling prices on the best rates available to residential customers through the various discount plans rather than the rates actually paid, id. ¶ 11, 25.

When corrected for these "grossly misleading" devices, id. ¶ 11, the incumbent's own data confirm that residential prices have increased in recent years while access charges (and other costs) have fallen, leaving a large class of residential customers who are served at prices well

above cost. Id. ¶¶ 5-34; see Hausman Reply Aff. ¶ 39. Moreover, while the interexchange carrier economists depend upon discounts and flat-rate plans as their basis for asserting that prices are falling, those plans have now become vehicles for hidden price increases. See generally BellSouth Br. at 74. AT&T's price "simplification" plan announced this month, is the latest example.[12] The Telecommunications Research and Action Center and Consumers Union have "complained that new rates would result in higher charges for many customers," particularly for shorter-distance calls. Id. The new plan adds three hours daily to the highest rate category and virtually eliminates the sharp drop in rates after 11:00 p.m. Id. The Common Carrier Bureau specifically asked AT&T to explain how its new rates comport with the company's commitment to flow-through access savings to residential callers.[13]

Through its expert, Marius Schwartz, DOJ agrees that the long distance business is in need of additional competition and "price declines can be expected from BOC entry." DOJ's Schwartz ¶ 98; Schwartz Supp. Aff. ¶ 77. The DOJ's economist explains that lower rates as a result of section 271 relief would "improv[e] . . . customers' welfare directly," and "ultimately would be a factor in inducing incumbent IXCs to improve their own offers or speed up the penetration of their more attractive current calling plans among their customer base." Schwartz Supp. Aff. ¶ 84.

---

[12] See Consumer Group Complains: AT&T Abandons Distance Charges, Joins MCI and Sprint in Using Per-Min. Rates, Communications Daily, Wed. Nov. 5, 1997, at 3.

[13] Letter from A. Richard Metzger, Jr., Chief, Common Carrier Bureau, FCC, to Rick D. Bailey, Vice President-Federal Government Affairs, AT&T, Nov. 7, 1997, at 1.

Incredibly, however, Professor Schwartz voices concern that "an increase in BOCs' share of interLATA revenues might be achieved largely by diverting output away from IXCs not by expanding industry output." Id. ¶ 74 (emphasis in original). Consumers will only be "divert[ed]" from the incumbent carriers because a Bell company offers lower prices or higher quality, which Schwartz concedes will be the result of section 271 relief. Hausman Reply ¶ 37. Thus, Schwartz's concern reduces to a desire to save the incumbent carriers from losing market share to new entrants. As Professor Hausman points out, "[n]o DOJ economist should worry about the fate of the [incumbent] IXCs here; the relevant question is the lower prices and increased consumer welfare." Id.

Professor Schwartz suggests that consumers may not save a full $1 billion per year from Bell company interLATA competition. His claims are incorrect, see Hausman Reply Aff. ¶¶ 30-38; Schmalensee Reply Aff. ¶¶ 5-34, but that is virtually beside the point. The salient and indisputable fact, accepted by all except the incumbent carriers themselves, is that consumers of interLATA services will be better off from granting this application.

B. Approving BellSouth's Application Will Promote Local Competition

Having found that the local market in South Carolina satisfies the requirements of section 271(c)(1) and the competitive checklist, that BellSouth will provide interLATA services in South Carolina in compliance with section 272, and that BellSouth's entry into the interLATA market will cause prices to fall, the Commission will have addressed the issues Congress intended it to consider. The local market has been opened, interLATA entry will be conducted as Congress desired, and consumers will be better off. The Application should be approved on this basis. See BellSouth Br. at 68-72 (discussing limits of the public interest test).

Nevertheless, numerous commenters have sought to cast this and other section 271 proceedings as involving a trade-off between local and long distance competition. Even if local competition issues beyond checklist compliance were considered, which they should not be, no balancing would be necessary. Approving BellSouth's application will promote both local and long distance competition. As the SCPSC found below, allowing BellSouth into long distance "will create real incentives for the major [interexchange carriers] to enter the local market rapidly in South Carolina, because they will no longer be able to pursue other opportunities secure in the knowledge that [BellSouth] cannot invade their market until they build substantial local facilities." Compliance Order at 66-67.

CLECs' newly proclaimed interest in becoming local carriers in South Carolina confirms that approving this Application is the most likely way to accelerate local competition in the State. Prior to the SCPSC's endorsement of BellSouth's request for relief, the vast majority of CLECs had no interest in competing in South Carolina. Those that did have an interest, such as ACSI and ITC DeltaCom, firmly limited themselves to serving business customers. See supra Part II(C). CLECs' new expressions of interest have certainly been prompted by hopes of defeating BellSouth's Application under Track B. Yet the prospect that BellSouth will break down the wall of separation between local and long distance markets by offering bundled service packages to its current residential customers, has played a significant role as well. As already noted, for example, ITC DeltaCom and MCI essentially acknowledge they will expand their local operations in South Carolina if this Application is granted. Supra p. 17 & n.14. Approval of the Application is especially important to entice the Big Three into the local market: Section 271 relief will not only encourage AT&T, MCI, and Sprint to market bundled services to their long

distance customers, but also will improve their ability to do so by lifting restrictions on joint marketing. 47 U.S.C. § 271(e)(1); see BellSouth Br. at 102-04.

C. There Would Be No Benefit from Expanding Congress's Test of Open Local Markets, if Such Action Were Permitted

Of course, these interLATA carriers would rather win business customers in the local markets they select than fight to retain their existing residential customers in South Carolina. Other CLECs likewise see opportunity in delaying BellSouth's interLATA relief, including the possibility of extracting concessions that could not be won in negotiations or arbitrations governed by sections 251 and 252. Accordingly, these carriers seek to shift the focus of the inquiry to a claim that offers almost limitless possibilities for expansion and delay: that the "harm to local competition is both glaring and substantial if BellSouth enters long distance now." MCI at 100.

Such contentions suffer from two fatal flaws. First, and very simply, Congress forbade the Commission from re-writing its checklist with local competition requirements beyond the fourteen items negotiated by legislators. Second, and even if Congress had left room for the Commission to adopt different standards, no party can point to any specific benefit from delaying BellSouth's interLATA entry once BellSouth has complied with the checklist; it is therefore impossible for the Commission to assess such supposed benefits or to find that they outweigh the concrete consumer gains from immediate interLATA entry by BellSouth.

1. The Benefits Sought By Opponents Are Unavailable Through the Section 271 Process

AT&T asserts that the competitive checklist consists merely a set of "minimum terms that BOCs must provide" to CLECs, which may be augmented as necessary to protect against "anticompetitive effects." AT&T at 72. Yet section 271(d)(4) sets out perhaps the most unambiguous statement in the whole Act: "The Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B)." 47 U.S.C. § 271(d)(4). There is no exception to this limitation, not even for a consideration of the public interest.

As the Senate Commerce Committee's Chairman observed, "[t]he FCC's public-interest review is constrained by the statute" because "the FCC is specifically prohibited from limiting or extending the terms used in the competitive checklist." 141 Cong. Rec. S7967 (June 8, 1995) (statement of Sen. Pressler). Because "agency discretion is defined by and circumscribed by law," the Commission's discretion could not under any circumstances "encompass the authority to contravene statutory commands." Farmworker Justice Fund, Inc. v. Brock, 811 F.2d 613, 622 (D.C. Cir.), vacated on other grounds, 817 F.2d 890 (D.C. Cir. 1987). This is true whether the Commission establishes additional "rigid requirements," AT&T at 72, or further local market "factors," Michigan Order ¶ 391. When determining whether an agency decision is arbitrary and capricious, courts consider "whether the decision was based on a consideration of the relevant factors . . . ." Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971). Accordingly, "an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider . . . ." Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983); see also Board of County Comm'rs v. Isaac,

18 F.3d 1492, 1497 (10th Cir. 1994) ("An agency acted arbitrarily and capriciously if it relied on factors deemed irrelevant by Congress . . . .").

These principles apply with particular force to substantive policies that are in conflict with the 1996 Act. For example, some CLECs advocate reintroduction of the Commission's invalidated "pick and choose" rule under the guise of the public interest test. See ALTS at 34-36; MCI at 80-81. This rule has been struck down as incompatible "with the Act's design to promote negotiated binding agreement." Iowa Utils. Bd., 120 F.3d at 801. It would not be any more harmonious with the congressional framework if imposed upon Bell companies through the public interest test.

Other CLECs seek to resurrect a metric test of local competition that Congress directly rejected. See, e.g., MCI at 98-99 ("Congress required local competition first, then long distance entry."). Section 271(c)(1)(B) makes clear — and the Commission itself has confirmed, Oklahoma Order ¶ 55 — that competitors' entry into the local exchange is not a prerequisite to Bell company entry into in-region interLATA markets. Track B, the Conference Report explains, "is intended to ensure that a BOC is not effectively prevented from seeking entry into the interLATA services market simply because no facilities-based competitor . . . has sought to enter the market." Conference Report at 148. Congress determined that while regulators should ensure symmetrical opportunities for local and long distance entry, entry tests that turn on measures of actual local competition would (if administrable at all) be contrary to the public interest. See Michigan Order ¶¶ 76-77.

Commenters who suggest that there would be benefits from enforcing extra-statutory requirements such as the "pick-and-choose" rule or a metric test of local competition ask this

Commission to undo a balance that Congress carefully calibrated. Congress decided after much debate that the competitive checklist would be its "test of when markets are open."[14] While CLECs and the DOJ — and even this Commission — may disagree with legislators' conclusions, in such a situation "the 'solution,' if there is to be one, lies with Congress." Independent Ins. Agents of Am. v. Ludwig, 997 F.2d 958, 961 (D.C. Cir. 1993). The Commission has no authority to upset Congress's legislative compromise.

2. There Would Be No Benefits from Delay

Even if their line of argument were supportable, commenters have utterly failed to show that local competition will be stronger in the future if BellSouth, having opened its markets by satisfying the checklist, is denied the ability to offer interLATA services. On the contrary, the SCPSC concluded based on its full investigation of local competition issues that BellSouth's entry into South Carolina's interLATA market "will have no adverse affect on local competition." SCPSC Order at 64.

AT&T and MCI seek to raise the specter of a BellSouth "monopoly over the provision of bundled packages consisting of BellSouth's local service and long distance service." AT&T at 66; see MCI at 100. This is ironic. Today, the ability to offer packages of local and interLATA services "is a formidable source of competitive advantage" for AT&T and MCI over BellSouth — which these carriers are actively exploiting in serving business customers. Gilbert Aff. ¶ 16; see id. ¶¶ 7-10. Section 271(e)(1) of the Communications Act, moreover, specifically

[14] 141 Cong. Rec. S8195 (daily ed. June 12, 1995) (statement of Sen. Pressler); 141 Cong. Rec. S8009 (daily ed. June 8, 1995) (statement of Sen. Hollings) (checklist is the test of "what actual and demonstrable competition would encompass").

guarantees AT&T, MCI, and Sprint the same easy entry into this area of competition (through local resale) that all other CLECs enjoy today.[15] As Professor Gilbert explained in BellSouth's Application, if customers take a bundled service package from BellSouth, "it will be because they prefer it." Id. ¶ 22; see also Hausman Reply Aff. ¶ 11.

Using a very different standard from those this Commission must use under Section 271(d), DOJ suggests that local markets should be "fully and irreversibly ope[n]" before BellSouth is granted in-region, interLATA relief. DOJ at 1-2. Then, DOJ asserts that "the benefits from opening the BOCs' local markets to competition prior to allowing BOC interLATA entry are likely to substantially exceed the benefits to be gained from more rapid BOC participation in long distance markets." Id. at 49. Professor Hausman explains that DOJ's conclusion "rests on no formal economic analysis" and, insofar as DOJ's expert discusses the work of Bell company witnesses, incorporates flawed assumptions and techniques. Hausman Reply Aff. ¶ 31; see id. ¶¶ 30-38; see also Schmalensee Reply Aff. ¶¶ 7-34, 38-52. DOJ also appears to ignore the factual finding of the SCPSC that local competition in South Carolina will increase due to approval of BellSouth's application. DOJ at 48-50.

Just as important, however, DOJ asks the wrong question. The issue before this Commission is not whether the benefits of "opening [BellSouth's] local markets to competition" justify retarding interLATA (and other) competition. It is whether any additional benefit from regulating BellSouth's local markets in accordance with DOJ's vague standard — over and above the benefits already guaranteed by opening the markets in accordance with Congress's

[15] Nor could it be argued that local resale opportunities might not be available from BellSouth. Such opportunities are a condition of interLATA authority under checklist item (xiv).

checklist — outweighs the costs of delay. DOJ never attempts to address this issue, nor does its evaluation provide sufficient detail for the Commission (or any other party) to conduct the necessary analysis on DOJ's behalf.

No party in this proceeding can promise any additional local competition if new conditions for in-region, interLATA relief are stacked on top of the checklist requirements. CLECs may, for example, find serving South Carolina's residential customers unattractive without regard to the CLECs demands for concessions from BellSouth.[16] BellSouth, however, can promise additional competition in interLATA services, intraLATA toll, manufacturing, and likely local services as well, if this Application is granted. BellSouth believes that if this Commission wishes to serve the interests of consumers, the choice is clear.

VI. ALLEGATIONS OF GENERAL MISCONDUCT ARE IRRELEVANT AND FALSE

In its Michigan Order, the Commission declared that as part of its public interest test, it would be "interested" in any evidence that "a BOC applicant has engaged in discriminatory or other anticompetitive conduct." Michigan Order ¶ 397. Predictably, CLECs have responded to this invitation with great enthusiasm, and have presented the Commission with a miscellany of supposedly "bad" behavior. These complaints have nothing to do with BellSouth's entry into interLATA services, or even its opening of local markets to CLECs. Instead, they have been

[16] The head of the Antitrust Division, for example, has focused on the slow pace of universal service reform. See, e.g., Address by Joel Klein, Assistant Attorney General, Antitrust Division, The Race For Local Competition: A Long Distance Run, Not a Sprint, at 14 (Nov. 5, 1997) ("residential customers will not get the full benefit of competition if we continue to rely on a system of implicit — as opposed to explicit — subsidies that make at least some of them unattractive to competitive carriers") (Ex. 20).

cobbled together as part of a last stand in a very determined effort to keep BellSouth out of long distance.

Payphones. The Independent Payphone Service Providers for Consumer Choice ("IPSPCC") raise several allegations focusing on BellSouth Public Communications, Inc. ("BSPC"), an indirect wholly-owned subsidiary of BST. Each of these contentions lack merit.

First, neither BST nor BSPC has discriminated against IPSPCC members or undertaken any unjust or unreasonable marketing practice that violates sections 201(b) or 202(a) of the Act. The BellSouth materials attached to the IPSPCC's comments nowhere suggest BellSouth or BSPC sought to interfere with existing contracts between location providers and IPSPCC members by "suggest[ing] that the Commission's rules require customers to reevaluate their choice of long distance company." IPSPCC at 5. In fact, the opposite is true. The contractual materials cited by the IPSPCC (at 5) clearly state that if the location provider has a contract with an entity other than BellSouth, that contract is to run its term unaffected. See IPSPCC Ex. A at 2, B.

Where sufficient information has been provided, BSPC also has fully investigated the allegations listed in Appendix D to the IPSPCC's comments, regarding three-way calls between BSPC, location providers, and interexchange carriers. These allegations are simply false. Shinholster Aff. ¶ 3.

Nor do BSPC's contractual or publicity materials "suggest that BellSouth has control" over any interexchange carrier. IPSPCC at 5. The materials filed by IPSPCC explicitly indicate that the location provider has no existing contract and is simply designating BSPC as its agent for the purpose of selecting the primary interexchange carrier. See Implementation of the Pay

Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 20541, 20662, ¶ 243 (1996) ("Report and Order") (noting that section 276 of the 1996 Telecommunications Act granted Bell company payphone service providers "the right to participate as a contractual intermediary between a location provider and a third-party interLATA carrier"). The BSPC contractual and publicity materials comport with both the spirit and the letter of the Report and Order. Furthermore, the contractual materials filed by IPSPCC have been superseded. Shinholster Aff ¶¶ 3-4. The current contractual materials explicitly state that BSPC will not interfere with existing contracts between carriers and location providers.

The IPSPCC's claims regarding fees BSPC charges to certain location providers are addressed in BellSouth's Application. BellSouth Br. at 98 n.62. IPSPCC also alleges that BSPC has engaged in "slamming" — the unauthorized changing of a payphone's primary interexchange carrier. IPSPCC at 11. BellSouth has investigated all of IPSPCC's allegations to the best of its abilities, and found no evidence of slamming.

Finally, the IPSPCC contends that BSPC "has a financial relationship with TelTrust that violates the prohibition against BOC provision of in-region interLATA service." Id. at 12. BSPC has simply negotiated a standard agreement with TelTrust under which BSPC will receive commissions based on the amount of traffic BSPC has aggregated. See Shinholster Aff ¶ 3.

Marketing practices. MCI accuses BellSouth of improperly attempting to retain customers who had already decided to transfer their local telephone service to MCI. See MCI at 84. MCI claims that BellSouth, upon receiving transfer orders from MCI for certain customers, has improperly sent "retention letters" urging these customers to cancel their orders. See id. Contrary to this allegation, the purpose of these letters was to ensure that customers were not

victims of slamming and had in fact decided to transfer. See Varner Aff. ¶¶ 233-236. Furthermore, BellSouth has altered the substance of these letters to address the concerns of competitors, and only sends these letters to customers after they have already been transferred. See id. ¶ 235.

ACSI accuses BellSouth of attempting to "lock-out" ACSI by entering into Property Management Services Agreements with real estate property managers and similar, exclusive marketing arrangements with sales agents. See ACSI at 54-56. The arrangements made between BellSouth and real estate property management and sales agents are purely voluntary; there is nothing in the agreement to prevent ACSI or any other competitor from entering into similar agreements. Varner Reply Aff. ¶ 6. These agreements merely require property managers and sales agents to recommend BellSouth as the provider of choice in a given building; the agreements do not in any way exclude other competitors, including ACSI, from providing service in a building, nor do they restrict tenants from obtaining service from BellSouth's competitors. Id.. The agreements also contain a termination clause that permits either party, if dissatisfied with the alliance, to cancel the contract upon 30 days written notice. Id.

ACSI also protests BellSouth's formation of multi-year customer-specific contract service arrangements with business customers. ACSI claims that, although there is nothing "inherently wrong with CSAs," BellSouth enjoys an "extraordinary head start" in the local market and therefore should "not be permitted to lock in customers to long-term contracts while local competition is in its infancy." ACSI at 54. The SCPSC authorized BellSouth to form CSAs with business customers many years before the 1996 Act was passed, in order to respond to growing competition. SCPSC at 10. As explained above, see supra Part III(E), BellSouth's

tariff imposes severe restrictions on its use of CSAs. Moreover, when CSAs expire, ACSI and other competitors will be free to bid for the business of these customers. See Varner Reply Aff. ¶ 44.

ACSI further alleges that in September 1997, ACSI lost a local Mississippi government contract worth more than $125,000 because BellSouth made "false and disparaging" comments about ACSI and defamatory comments about ACSI's employees. See ACSI at 53. BellSouth takes seriously its obligations under the Act. Agerton Aff. ¶ 16. BellSouth employees are specifically instructed concerning how products and services are offered. Id. ¶ 15. In addition, to prevent incidents of the sort alleged by ACSI, each BellSouth employee receives a letter from the officer of his or her organization warning that no BellSouth employee may "say, write or otherwise do anything to disparage" BellSouth's competitors. Id. ¶ 6.

BellSouth Enterprises. WorldCom charges that BellSouth established BellSouth Enterprises (BSE), a competitive LEC, in order to avoid the unbundling and interconnection obligations of the Act "or perhaps as a convenient straw man for purposes of Section 271." WorldCom at 26-27. BellSouth created BSE for competitive purposes; it will have greater pricing flexibility and will be able to offer service in states outside of BellSouth's region. While BSE will not have to comply with the same requirements as BellSouth, there is nothing inappropriate about this fact: BSE will be operating as a CLEC with no market share in the areas in which it will offer service and have no control over traditional monopoly facilities. BSE is precisely the type of new entrant that the Act was intended to encourage, as it will increase competition in the regions that it will serve.

Extended Area Service. Vanguard Cellular accuses BellSouth of acting anticompetitively with respect to the voice messaging marketplace in Georgia. BellSouth fully addressed the allegations regarding its MemoryCall service in its Application. See BellSouth Br. at 98 n.62.

BellSouth's Area Plus service is an optional, seven-digit dialed, expanded local calling service that offers unlimited calling within a customer's LATA for a fixed price. AT&T suggests that BellSouth has used this service as a way of improperly expanding its local service in order to block intraLATA toll competition. AT&T at 71. In connection with this service, AT&T also accuses BellSouth of having entered into a "secret" plan with independent LECs by which BellSouth and these LECs would compensate each other for the interchange of traffic at lower rates than the rates interexchange carriers paid under a subsequent industry agreement. See AT&T at 70-71.

There was nothing "secret" about BellSouth's agreement. The Area Calling Plan ("ACP") agreement was reached by LECs serving South Carolina after negotiations that were started in 1989 — well in advance of intraLATA competition in South Carolina. Varner Reply Aff. ¶ 10. The agreement established principles to better manage requests for additional Extended Area Service ("EAS") in South Carolina, as well as to establish billing arrangements between companies offering EAS plans. Id. In fact, the SCPSC ruled that the development of this service was at its direction and was unrelated to the introduction of intraLATA toll competition. Id. ¶ 11.

Second, while AT&T complains that EAS plans are inherently discriminatory, they have consistently been upheld by state commissions. Id. ¶ 8. Moreover, CLECs are not precluded from offering this same expanded service. Id. Although not obligated to do so, BellSouth has

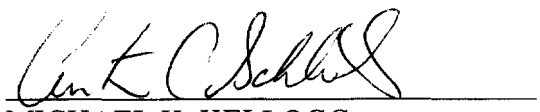
offered the terms of its ACP agreement to all IXCs offering EAS plans. In April of 1994, AT&T accepted these terms in a stipulation that was filed with the SCPSC. Id. ¶ 12.

Finally, AT&T notes proceedings before the Florida, Kentucky, and Georgia commissions concerning intraLATA toll marketing practices. See AT&T at 7. BellSouth has revised its policies as necessary to comply with the state commissions' orders. It is not disputed that intraLATA toll competition has flourished in these states.

CONCLUSION

Congress established a road map for simultaneously opening local and long distance markets. This Commission should return to that plan. BellSouth has done everything required to open the local market in South Carolina, as the SCPSC has verified. Further delay in opening interLATA markets will cause consumers direct harm, with no offsetting benefit of any kind. The Application should be granted.

Respectfully submitted,



MICHAEL K. KELLOGG
AUSTIN C. SCHLICK
KEVIN J. CAMERON
JONATHAN T. MOLOT
WILLIAM B. PETERSEN
KELLOGG, HUBER, HANSEN,
TODD & EVANS, P.L.L.C.
1301 K Street, N.W.
Suite 1000 West
Washington DC 20005
(202) 326-7900
Counsel for BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc.

WALTER H. ALFORD
WILLIAM B. BARFIELD
JIM O. LLEWELLYN
1155 Peachtree Street, N.E.
Atlanta, GA 30367
(404) 249-2051
DAVID G. FROLIO
1133 21st Street, N.W.
Washington, DC 20036
(202) 463-4182
GARY M. EPSTEIN
LATHAM & WATKINS
1001 Pennsylvania Ave., N.W.
Washington, DC 20004
(202) 637-2249
Counsel for BellSouth Corporation

MARGARET H. GREENE
R. DOUGLAS LACKEY
MICHAEL A. TANNER
STEPHEN M. KLIMACEK
675 W. Peachtree Street, N.E.
Suite 4300
Atlanta, GA 30375
(404) 335-0764
Counsel for BellSouth Telecommunications, Inc.

JAMES G. HARRALSON
28 Perimeter Center East
Atlanta, GA 30346
(770) 352-3116
Counsel for BellSouth Long Distance, Inc.

November 14, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of November, 1997, I caused copies of the foregoing Reply Brief in Support of Application by BellSouth for Provision of In-region, Interlata Services in South Carolina to be served upon the parties on the attached service list via U.S. mail.

Austin C. Schlick

SERVICE LIST
Reply Comments for Provision of In-Region,
InterLATA Services in South Carolina
FCC Docket No. 97-208

Federal Communications Commission	William Caton (Original + 11 copies) Office of the Secretary Federal Communications Commission Room 222 1919 M Street, N.W. Washington, DC 20554 Janice Myles (5 copies) Policy and Program Planning Division Common Carrier Bureau Federal Communications Commission Room 544 1919 M Street, N.W. Washington, DC 20554
U.S. Department of Justice	Donald J. Russell (5 copies) U.S. Department of Justice Antitrust Division, City Center Building 1401 H Street, N.W., Suite 8000 Washington, DC 20530 Joel Klein Acting Assistant U.S. Attorney U.S. Department of Justice 950 Pennsylvania Ave., N.W. Washington, DC 20530-001
South Carolina Public Service Commission	F. David Butler, General Counsel South Carolina Public Service Commission 111 Doctors Circle P.O. Box 11649 Columbia, SC 29211
ITS	ITS 1231 20th Street, N.W. Washington, DC 20036

ACSI	Riley M. Murphy Executive Vice President and General Counsel American Communications Services, Inc. 131 National Business Parkway Suite 100 Annapolis Junction, MD 20701 Brad E. Mutschelknaus John J. Heitmann Kelley Drye & Warren LLP 1200 Nineteenth Street, N.W. Suite 500 Washington, D.C. 20036
Ad Hoc Coalition	Rodney L. Joyce Ginsburg, Feldman and Bress 1250 Connecticut Avenue, N.W. Washington, D.C. 20036
Ameritech	Kelly R. Welsh John T. Lenahan Gary L. Phillips Ameritech 30 South Wacker Drive Chicago, IL 60606 Theodore A. Livingston Douglas A. Poe John E. Muench Gary Feinerman Mayer, Brown & Platt 190 South LaSalle Street Chicago, IL 60603
ALTS	Richard J. Metzger Emily M. Williams Association for Local Telecommunications Services 888 17th Street, N.W. Washington, D.C. 20006

American Council on Education	Sheldon E. Steinbach Vice President and General Counsel American Council on Education One Dupont Circle, N.W. Washington, D.C. 20036
American Council on Education	Christine E. Larger Director, Public Policy and Management Programs National Association of College and University Business Officers 2501 M Street, N.W. Washington, D.C. 20037
AT&T	Mark C. Rosenblum Leonard J. Cali Roy E. Hoffinger Stephen C. Garavito AT&T Corp. 295 North Maple Avenue Basking Ridge, NJ 07920 Kenneth P. McNeely AT&T Corp. 1200 Peachtree Street, N.E. Promenade I, Room 4036 Atlanta, GA 30309 David W. Carpenter Mark E. Haddad Ronald S. Flagg Lawrence A. Miller George W. Jones, Jr. Richard E. Young Sidley & Austin 1722 Eye Street, N.W. Washington, D.C. 20006
Competitive Telecommunications Association	Genevieve Morelli Executive V.P. and General Counsel The Competitive Telecommunications Association 1900 M Street, N.W. Suite 800 Washington, D.C. 20036

	Danny E. Adams Steven A. Augustino Kelley Drye & Warren LLP 1200 Nineteenth Street, N.W., Suite 500 Washington, D.C. 20036
GenCorp	James R. Ivan Manager, Telecommunications 175 Ghent Road Fairlawn, OH 44333
Hyperion Telecommunications, Inc. and KMC Telecom Inc.	Antony Richard Petrilla Swidler & Berlin, Chartered 3000 K Street, N.W. Suite 300 Washington, D.C. 20007-5116
Independent Payphone Service Providers for Consumer Choice	Charles H. Helein Helein & Associates, P.C. 8180 Greensboro Drive Suite 700 McLean, VA 22102
Intermedia Communications Inc.	Jonathan E. Canis Enrico C. Soriano Kelley Drye & Warren LLP 1200 19th Street, N.W. Suite 500 Washington, D.C. 20036
LCI International	Douglas W. Kinkoph Director, Regulatory and Legislative Affairs 8180 Greensboro Drive Suite 800 McLean, VA 22102
Low Tech Designs	James M. Tennant President Low Tech Designs, Inc. 1204 Saville Street Georgetown, SC 29440
MCI	Jerome L. Epstein Marc A. Goldman Paul W. Cobb, Jr. Thomas D. Amrine Jenner & Block